

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 21,191
)	
Appeal of)	

INTRODUCTION

The petitioners appeal a decision by the Department for Children and Families denying their application for Food Stamps. The issue is whether the Department is correct that petitioners are not entitled to a shelter deduction because the petitioners are repairing their home in lieu of rent to the landlord.

FINDINGS OF FACT

1. The petitioners are husband and wife; they are considered a two person household for Food Stamp purposes. The husband is currently unemployed and receives unemployment compensation benefits in the amount of \$338 per week or \$1,453.40 per month. The wife is unemployed and is applying for Social Security Disability benefits.

2. On or about May 7, 2007, the petitioners moved into their current housing. On or about June 1, 2007, the petitioners and the landlord signed a five year lease. The

lease acknowledged that the property was not currently habitable. Paragraph 1 of the lease provided:

[Petitioner} shall provide all materials and perform all labor necessary to restore the Premises to habitable condition. Work and materials shall include at a minimum:

- a. Replacement of tin roof
- b. Window replacement
- c. Drywall interior replacement/repairs
- d. Heating system
- e. Electrical and plumbing repairs

The lease further provided that petitioners complete the repairs in one year and that the petitioners are responsible for all utilities. In consideration, the petitioners can live in the property for five years rent-free.

3. The petitioners applied for Food Stamps on or about October 16, 2007. The Department denied the petitioners' application on or about October 22, 2007.

4. Petitioners appeared for a fair hearing on December 5, 2007. At the fair hearing, it became evident that the Department's calculations that the petitioners' income exceeded the gross income test for Food Stamps were erroneous¹ and that the Department had not determined petitioners' eligibility under the pertinent criteria for

¹ Applicants for Food Stamps must meet both the gross and net income tests (except in certain situations that do not apply in this case).

Food Stamps. The case was sent back to the Department for further consideration.

5. The Department determined that the petitioners do not meet the net income test for Food Stamps. The Department did not allow the petitioners a shelter deduction because the landlord's in-kind contribution of rent disqualified the petitioners from the shelter allowance. The Department looked at utility costs and applied the standard utility allowance of \$572 per month. Under the pertinent regulations, *infra*, an applicant is allowed a shelter/utility deduction for those costs in excess of 50 percent of income after other deductions have been taken. The Department applied the standard deduction of \$134 leaving \$1,319.40 in countable income. The standard utility allowance of \$527 was not in excess of 50 percent of the countable income (\$659.70); as a result, the Department did not apply a utility allowance deduction. The Department found that the petitioners' countable income of \$1,319.40 is in excess of the net income limit for a two-person household of \$1,141.

ORDER

The Department's decision to deny Food Stamps is affirmed.

REASONS

The Food Stamp program was created to combat hunger and malnutrition among low income households. Food Stamp Manual (FSM) § 271.1. To meet the eligibility standards for the Food Stamp program, petitioners must have income that meets both the gross and net income tests. FSM § 273.9(a). Petitioners' gross monthly income of \$1,453.40 meets the gross monthly income of limit of \$1,484 for a household of two. P-2590C.

If a household meets the gross income test, the next step is to determine the household's countable income after subtracting the standard deduction and any other deductions allowed by the regulations. FSM § 273.9(d).

In petitioner's case, the Department subtracted the standard deduction of \$134 leaving \$1,319.40 monthly income. The Department then looked at the shelter/utility deduction.

First, the Department looked at whether the petitioners should receive a shelter deduction since the petitioners receive in-kind rent. The Department considers the exchange of repairs for rent as in-kind income from the landlord to the petitioners, but the Department excludes this in-kind income from household income. FSM § 273.9(c)(1). The Department then excludes the value of repairs and labor from

allowable shelter expenses in certain circumstances. FSM § 273.9(d)(5)(i)(E) allows shelter repairs as follows:

Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. (emphasis added).

The in-kind support from the landlord is an example of the "any other source" referenced in the above regulation. As a result, the value of petitioners' labor and repairs are not an allowable shelter deduction.

Second, the Department looked at whether the utility allowance would trigger the shelter/utility deduction. Vermont has elected to use a standard utility allowance for households. In petitioners' case, the standard utility allowance is \$527. FSM § 273.9(d)(6). A household qualifies for the deduction if their shelter/utility allowance is greater than 50 percent of the household's net income.

In petitioners' case, 50 percent of their net income is \$659.70. Because the utility allowance is less than 50 percent of their net income, the petitioners do not qualify for a shelter/utility deduction. The petitioner's countable monthly income is \$1,319 which is in excess of the net monthly limit of \$1,114 for a household of two.

The Board cannot base its decision of the effects of a particular decision, but is bound to affirm the Department's decision if that decision is based on the law. In conclusion the Department's decision to deny Food Stamps is affirmed.

3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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